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SEP 26 2013



## MEMORANDUM

**DATE:** September 26, 2013

**TO:** Mayor and Council

**THRU:** Rich Dlugas, City Manager *RD*  
Debra Stapleton, Director of Human Resources *DAS*  
Valerie Hernandez, Benefit Programs Manager *VH*

**FROM:** Carol Osterhaus, Benefits Analyst *Carla*

**SUBJECT:** Recommendation for Approving and Authorizing the City of Chandler as Plan Sponsor to enter into a Business Associate Agreement with Buck Consultants, LLC – Resolution No. 4717

**RECOMMENDATION:** Approve Resolution No. 4717, to enter a Business Associate Agreement between the City of Chandler and Buck Consultants, LLC.

**BACKGROUND:** In 2010, the Health Information Technology for Economic and Clinical Health Act, 42 U.S.C. 3000 et seq. (“HITECH Act”) required that entities sponsoring health benefits plans for their employees (“Plan Sponsor”) and the entities providing health care services under the plan (“Business Associates”) enter into agreements that set forth action that each shall undertake to protect the Protected Health Information (PHI) of the employees covered by the Plans.

**MOTION:** Approve Resolution No. 4717, to approve and authorize the City of Chandler to enter into a Business Associate Agreement with Buck Consultants, LLC.

**RESOLUTION NO. 4717**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY  
OF CHANDLER, ARIZONA APPROVING AND AUTHORIZING  
CITY OF CHANDLER AS PLAN SPONSOR TO ENTER A  
BUSINESS ASSOCIATE AGREEMENT  
WITH BUCK CONSULTANTS, L.L.C.**

**WHEREAS**, the Health Information Technology for Economic and Clinical Health Act, 42 U.S.C. 3000 *et seq.* ("HITECH Act" or "The Act") and the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Pub. L. 104-191, require that entities sponsoring health benefits plans for their employees ("Plan Sponsors"), and entities providing health care services under such plans ("Business Associates") must enter agreements ("Business Associate Agreements") that set forth actions that the each shall undertake to protect the personal health information ("PHI") of the employees covered by such plans as set forth in those Acts and their related enforcement rules; and

**WHEREAS**, the City of Chandler is the plan sponsor for the City of Chandler Health Care Benefits Plan ("Plan") and Buck Consultants, L.L.C. provides health care services to this Plan; and

**WHEREAS**, in order to comply with the requirements of the HITECH Act, HIPAA and their related enforcement rules, it is in the City's best interests to enter this Business Associate Agreement with Buck Consultants, L.L.C.

**NOW THEREFORE, BE IT RESOLVED**, by the City Council of the City of Chandler, Arizona, as follows:

Section 1. That the Business Associate Agreement Between the City of Chandler as Plan Sponsor and Buck Consultants, L.L.C., is hereby adopted and approved.

Section 2. That the Mayor of the City of Chandler is hereby authorized to sign the above-listed Business Associate Agreement on behalf of the City of Chandler and the City of Chandler Health Care Benefits Plan.

Section 3. That the various City officers and employees of the City of Chandler be and they hereby are, authorized and directed to perform all acts necessary to give effect to this Resolution.

**PASSED AND ADOPTED** by the City Council of the City of Chandler, Arizona this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

*CH for*

**CERTIFICATION**

I HEREBY CERTIFY that the above and foregoing Resolution No. 4717 was duly passed and adopted by the City Council of the City of Chandler, Arizona at a regular meeting held on the \_\_\_\_ day of \_\_\_\_\_, 2013, and that a quorum was present thereat.

\_\_\_\_\_  
City Clerk

## BUSINESS ASSOCIATE AGREEMENT

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2013 by and between Buck Consultants, LLC ("Business Associate") and City of Chandler Health Care Benefits Plan, (with the City of Chandler as Plan Sponsor acting herein on behalf of such Plan(s)), hereby collectively designated as ("Covered Entity"). Individually, Covered Entity and Business Associate are referred to as a "Party" and collectively "Parties." This Agreement supplements and is made a part of the underlying services agreement dated June 28, 2010, and amended subsequently by Amendments dated: (1) June 13, 2011; (2) June 15, 2012; and (3) June 14, 2013, between Covered Entity and Business Associate (the "Services Agreement") pursuant to which Business Associate will perform specified human resources and employee benefits consulting services for and on behalf of Covered Entity.

WHEREAS, Business Associate and Covered Entity desire and are committed to complying with all relevant federal and state laws with respect to the confidentiality and security of Protected Health Information (PHI), including, but not limited to, the federal Health Insurance Portability and Accountability Act of 1996, and accompanying regulations, as amended from time to time (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH), and any regulations promulgated thereunder.

NOW, THEREFORE, for valuable consideration the receipt of which is hereby acknowledged, and intending to establish a business associate relationship under 45 CFR §164, the Parties hereby agree as follows:

### I. Definitions

- A. "Business Associate" shall have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the Party to this agreement, shall mean Buck Consultants, LLC.
- B. "Breach" shall be defined as set out in 45 CFR §164.402.
- C. "CFR" means the Code of Federal Regulations. A reference to a CFR section means that section as amended from time to time; provided that if future amendments change the designation of a section referred to herein, or transfer a substantive regulatory provision referred to herein to a different section, the section references herein shall be deemed to be amended accordingly.
- D. "Compliance Date(s)" shall mean the date(s) established by the Secretary or the United States Congress as the effective date(s) of applicability and enforceability of the Privacy Rule, Security Rule and HITECH Standards.
- E. "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 CFR §164.501 and shall include a group of records that is: (i) the enrollment, payment, claims adjudication and case or medical management record systems maintained by or for Covered Entity by Business Associate or (2) used, in whole or in part, by or for Covered Entity to make decisions about Individuals.
- F. "Electronic Protected Health Information" (EPHI) shall have the same meaning as the term "electronic protected health information" in 45 CFR §160.103, limited to the information received from or created on behalf of Covered Entity by Business Associate.
- G. "HITECH Standards" shall mean the privacy, security and security breach notification provisions applicable to a Business Associate under Subtitle D of the Health Information Technology for

Economic and Clinical Health Act, which is Title XIII of the American Recovery and Reinvestment Act of 2009, as such law may be amended from time to time, and any regulations promulgated thereunder.

- H. "Individual" shall have the same meaning as the term "individual" in 45 CFR §160.103, and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- I. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR parts 160 and 164, subparts A and E.
- J. "Protected Health Information" (PHI) shall have the same meaning as the term "protected health information" in 45 CFR §160.103, limited to the information received from or created on behalf of Covered Entity by Business Associate.
- K. "Required by Law" shall have the same meaning as the term "required by law" in 45 CFR §164.103.
- L. "Security Incident" shall have the same meanings as the term "security incident" in 45 CFR §164.304.
- M. "Security Rule" shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR parts 160 and 164, subparts A and C.
- N. "Unsecured PHI" shall have the same meaning as "unsecured protected health information" in 45 CFR §164.402.

Terms used, but not otherwise defined, shall have the same meaning as those terms in the Privacy Rule, Security Rule and HITECH Standards.

## **II. Obligations of Business Associate**

- A. Business Associate agrees not to use or disclose PHI other than as permitted or required by this Agreement or as Required by Law. Business Associate will take reasonable efforts to limit requests for, use and disclosure of PHI to the minimum necessary to accomplish the intended request, use or disclosure.
- B. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement. Business Associate shall implement administrative, physical, and technical safeguards (including written policies and procedures) that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity as required by the Security Rule.
- C. Business Associate agrees to report to Covered Entity any use or disclosure of PHI other than as provided for by this Agreement promptly after Business Associate has actual knowledge of such use or disclosure, and to report promptly to the Covered Entity all Security Incidents of which it becomes aware as determined by Business Associate. Following the discovery of a Breach of Unsecured PHI, Business Associate shall notify Covered Entity of such Breach without unreasonable delay, and in no event later than 60 calendar days after such discovery. The notification will include the identification of each individual whose Unsecured PHI has been, or is reasonably believed to have been, accessed, acquired or disclosed during the Breach. A Breach shall be treated as discovered as of the first day on which such Breach is known or reasonably should have been known to Business Associate.

- D. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of this Agreement or applicable regulations.
- E. Business Associate agrees to include in its agreement with any agent or subcontractor to whom it provides PHI on behalf of the Covered Entity conditions with respect to such information that are at least as restrictive as those that apply through this Agreement to Business Associate. Business Associate agrees to ensure that any agents, including sub-agents, to whom it provides EPHI received from, or created or received by, Business Associate on behalf of the Covered Entity, agree in writing to implement the same reasonable and appropriate safeguards that apply to Business Associate to protect the Covered Entity's EPHI.
- F. If Business Associate maintains PHI in a Designated Record Set, Business Associate agrees to make available to Covered Entity, within a reasonable time, such information as Covered Entity may require to fulfill Covered Entity's obligations to respond to a request for access to PHI as provided under 45 CFR §164.524 or to respond to a request to amend PHI as required under 45 CFR §164.526. Business Associate shall refer to Covered Entity all such requests that Business Associate may receive from Individuals. If Covered Entity requests Business Associate to amend PHI in Business Associate's possession in order to comply with 45 CFR §164.526, Business Associate shall effectuate such amendments no later than the date they are required to be made by 45 CFR §164.526; provided that if Business Associate receives such a request from Covered Entity less than ten (10) business days prior to such date, Business Associate will effectuate such amendments as soon as is reasonably practicable.
- G. If applicable, Business Associate agrees to provide to Covered Entity within a reasonable time such information necessary to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures as provided under 45 CFR §164.528. Business Associate shall refer to Covered Entity all such requests which Business Associate may receive from Individuals.
- H. Upon reasonable notice, Business Associate agrees to make its internal practices, books, and records relating to the use and disclosure of PHI available to the U.S. Secretary of Health and Human Services, or an officer or employee of that Department to whom relevant authority has been delegated, at Covered Entity's expense in a reasonable time and manner, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- I. Notwithstanding any other provision in this Agreement, Business Associate hereby acknowledges and agrees that to the extent it is functioning as a Business Associate of Covered Entity, Business Associate will comply with the HITECH Business Associate provisions and with the obligations of a Business Associate as prescribed by HIPAA and the HITECH Act commencing on the Compliance Date of each such provision. Business Associate and the Covered Entity further agree that the provisions of HIPAA and the HITECH Act that apply to Business Associates and that are required to be incorporated by reference in a Business Associate Agreement are incorporated into this Agreement between Business Associate and Covered Entity as if set forth in this Agreement in their entirety and are effective as of the Compliance Date.

### **III. Permitted Uses and Disclosures by Business Associate**

Except as otherwise limited in this Agreement, Business Associate may:

- A. Use or disclose Protected Health Information on behalf of the Covered Entity, if such use or disclosure of Protected Health Information would not violate the Privacy Rule if done by the Covered Entity.
- B. Use or disclose PHI to perform the services outlined in the Services Agreement.
- C. Use Protected Health Information for the proper management and administration of Business Associate or to fulfill any present or future legal responsibilities of Business Associate.
- D. Disclose Protected Health Information for the proper management and administration of Business Associate or to fulfill any present or future legal responsibilities of Business Associate, provided that such disclosure is either Required by Law or Business Associate obtains reasonable assurances from any person to whom Protected Health Information is disclosed that such person will: (i) keep such information confidential, (ii) use or further disclose such information only for the purpose for which it was disclosed to such person or as Required by Law, and (iii) notify Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- E. Use Protected Health Information to provide data aggregation services relating to the health care operations of the Covered Entity, as provided in 45 CFR §164.501.
- F. To create de-identified data, provided that the Business Associate de-identifies the information in accordance with the Privacy Rule. De-identified information does not constitute PHI and is not subject to the terms and conditions of this Agreement.

### **IV. Obligations of Covered Entity**

- A. Covered Entity shall notify Business Associate of any facts or circumstances that affect Business Associate's use or disclosure of PHI. Such facts and circumstances include, but are not limited to: (i) any limitation or change in Covered Entity's notice of privacy practices, (ii) any changes in, or withdrawal of, an authorization provided to Covered Entity by an Individual pursuant to 45 CFR §164.508; and (iii) any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR §164.522.
- B. Covered Entity warrants that it will not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule or is not otherwise authorized or permitted under this Agreement.
- C. Covered Entity acknowledges and agrees that the Privacy Rules allow the Covered Entity to permit Business Associate to disclose or provide access to PHI, other than Summary Health Information, to the Plan Sponsor only after the Plan Sponsor has amended its plan documents to provide for the permitted and required uses and disclosures of PHI and to require the Plan Sponsor to provide a certification to the Plan that certain required provisions have been incorporated into the Plan documents before the Plan may disclose, either directly or through a Business Associate, any PHI to the Plan Sponsor. Covered Entity hereby warrants and represents that Plan documents have been so amended and that the Plan has received such certification from the Plan Sponsor.
- D. Covered Entity agrees that it will have entered into Business Associate Agreements with any third parties to whom Covered Entity directs and authorizes Business Associate to disclose PHI.

## **V. Effective Date; Termination**

- A. The effective date of this Agreement shall be the date this Agreement is signed by both Parties.
- B. This Agreement shall terminate on the date Business Associates ceases to be obligated to perform the functions, activities, and services described in Article III.
- C. Either Party may terminate this Agreement if the other Party ("breaching Party") has breached any material provision of this Agreement and, upon written notice from the non-breaching Party specifying the material breach, fails to cure the breach within 30 days after receipt of the notice. If the material breach is not cured within that period, the non-breaching Party may exercise the right to terminate this Agreement by providing the breaching Party written notice of termination. Any such termination will be effective immediately or at such other date specified in the non-breaching Party's notice of termination. If the non-breaching Party determines that termination of this Agreement is not feasible, the non-breaching Party may report such breach to the Secretary.
- D. Upon termination of this Agreement, Business Associate will return to Covered Entity, or if return is not feasible, destroy, any and all PHI that it created or received on behalf of Covered Entity and retain no copies thereof. If the return or destruction of the PHI is determined by Business Associate not to be feasible, Business Associate shall limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible. If return or destruction of the PHI is feasible but Business Associate is required by law to retain such information or copies thereof, Business Associate will maintain the PHI for the period of time required under applicable law after which time Business Associate shall return or destroy the PHI.
- E. Business Associate's obligations under Sections II and III of this Agreement shall survive the termination of this Agreement with respect to any PHI so long as it remains in the possession of Business Associate.

## **VI. Other Provisions**

- A. The Parties acknowledge that the foregoing provisions are designed to comply with the mandates of the Privacy and Security Rules and the HITECH Standards and agree to make any necessary changes to this agreement that may be required by any amendment to the final regulations promulgated by the Secretary. If the Parties are unable to reach agreement regarding an amendment within thirty (30) days of the date that Business Associate receives any written objection from Covered Entity, either Party may terminate this Agreement upon ninety (90) days written notice to the other Party. Any other amendment to the Agreement unrelated to compliance with applicable law and regulations shall be effective only upon execution of a written agreement between the Parties.
- B. Except as it relates to the use, security and disclosure of PHI and electronic transactions, this Agreement is not intended to change the terms and conditions of, or the rights and obligations of the Parties under any other services agreement between them.
- C. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- D. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the Covered Entity to comply with the Privacy and Security Rules and the HITECH Standards.

E. This Agreement will be governed by and construed in accordance with the laws of the jurisdiction designated in the Services Agreement.

F. This Agreement replaces and supersedes in its (their) entirety any prior Business Associate Agreement(s) between the Parties.

In witness whereof, this Agreement has been signed and delivered as of the date first set forth above.

Chandler Health Care Benefits Plan Provided by  
City of Chandler

Buck Consultants, LLC

by \_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Printed Name*

\_\_\_\_\_  
*Mayor*

by Robert C. Burnell  
*Signature*

Robert C. Burnell  
*Printed Name*

Principal  
*Title*

City of Chandler

ATTEST: (if Corporation)

By: \_\_\_\_\_  
*Signature*

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
*Printed Name*

\_\_\_\_\_  
*Mayor*

Approved as to Form:

City Attorney *CH for*

ATTEST:

\_\_\_\_\_  
*City Clerk (seal)*